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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,442	11/30/2000	Christian Lemler	50325-0505	2497

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HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110

EXAMINER

BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
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2141

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/728,442

Applicant(s)

LEMLER ET AL.

Examiner

Djenane M. Bayard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11,22,23,25,27-29,31-33,36,37,39,40,42 and 43 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1,3-6,8-11,22,23,25,27-29,31-33,36,37,39,40,42 and 43 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)

- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

- 5) ☐ Notice of Informal Patent Application

- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 6, 8-9, 25, 36-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored in a computer-readable medium, in a computer, on an electromagnetic carrier signal does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Response to Arguments

3. Applicant's arguments with respect to claims 1, 6, 10 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-6, 9-11, 22, 25, 28-29, 32-33, 36, 39, 42 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,701,342 to Bartz et al.

a. As per claims 1, 6, and 10-11, Bartz et al teaches a method for defining a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider and agreed to by the customer (See col. 5 lines 11-34 *each SLA is preferably defined by an conformance period, a compliance percentage and a contract date*), the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements (See col. 5, lines 36-61 and col. 12, lines 17-44); receiving first information defining the service level agreement, wherein said information defines one or more test for monitoring the level of service that has been offered to the customer (See col. 13, lines 37-67 and col. 14, lines 1-40) ; verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See col. 12, lines 18-62); receiving second information defining service level contract associated with the service level agreement , wherein said second information defines apply times for performing the one or more test (See col. 8, lines 1-14) and verifying that said information defining the first service level agreement and said second information defining the service level contract conform with the level of service that has been offered to the customer by the service provider by performing if said information defining said particular service level

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agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests (See (See col. 4, lines 47-67); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 13, lines 53-63).

b. As per claims 4, 9, 28 and 32, Bartz et al teaches the claimed invention as described above. However, Bartz et al fails to teach generating, at a server, interface data for defining the service level agreement (See col. 4, lines 18-46); and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 46-67).

c. As per claims 5, 25, 29, 33, Bartz et al teaches the claimed invention as described above. Furthermore, Bartz et al teaches the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests (See col. 4, lines 30-67).

d. As per claims 22, 36, 39 and 42, Bartz et al teaches the claimed invention as described above. Furthermore, Bartz et al teaches wherein the one or more tests are one or more metric tests, and the step of receiving information defining the service level agreement comprises: receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provider (See col. 3, lines 6-26); and verifying that based

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on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer by the service provider (See col. 3, lines 27-48).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 8, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,701,342 to Bartz et al applied to claims 1, 6, 10 and 11 above, and further in view of U.S. Patent Application Publication No. 202/004,981 to Dattatri et al.

a. As per claims 3, 8, 27 and 31 Bartz et al teaches the claimed invention as described above. Furthermore, Bartz teaches wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col. 12, lines 18-32). However, Bartz et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

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It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Dattatri et al in the claimed invention of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

8. Claims 23, 37, 40, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,701342 to Bartz et al applied to claims 1, 6, 10 and 11 above, and further in view of U.S. Patent U.S. Patent No. 6, 701345 to Carley et al

a. As per claims 23, 37, 40 and 43, Bartz et al teaches the claimed invention as described above. However, Bartz et al fails to teach wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider.

Carley et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider (See col. 37, lines 7-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider as taught by Carley et al in the claimed invention of Bartz et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Djenane Bayard

Patent Examiner


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER